

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No.: 1:09-cv-00203

UNITED GUARANTY RESIDENTIAL
INSURANCE COMPANY OF NORTH
CAROLINA,

Plaintiff,

vs.

COUNTRYWIDE FINANCIAL CORP.
and COUNTRYWIDE HOME LOANS,
INC.,

Defendants.

**DEFENDANTS' MOTION TO STAY
BASED ON JUDICIAL EFFICIENCY
GROUND IN LIGHT OF EARLIER-
FILED AND MORE
COMPREHENSIVE ACTION, OR IN
THE ALTERNATIVE, TO COMPEL
ARBITRATION**

Defendants' Countrywide Financial Corporation and Countrywide Home Loans, Inc., through counsel respectfully move the Court for an Order to Stay the action at bar on grounds of judicial efficiency in light of an earlier filed and more comprehensive action, or in the alternative, for an Order to Compel Arbitration under 9 U.S.C.A. § 1, *et seq.* The specific grounds for both motions are set forth in detail in the memorandum in support of both motions filed concurrently herewith.

In support of the Motion to Stay, defendants rely upon the following documents:

- The Complaint filed herein;
- The Declaration of John Ellison with attached Exhibits filed April 14, 2009:
Exhibit 1 Complaint entitled *Countrywide Bank, FSB, et al. v. United Guaranty Mortgage Indemnity Co., et al.*, No. BC409996 ("State Court Action"); and
Exhibit 2 Complaint entitled *United Guaranty Mortgage Indemnity Co. v. Countrywide Financial Corp., et al.*, No. 2:09-cv-1888 ("Federal Court Action").

- The Stay Declaration of John Ellison with attached Exhibits filed on April 23, 2009:

Exhibit A United Guaranty's Demand for Arbitration;

Exhibit B Notice of Removal of Action to Federal Court;

Exhibit C Notice of Pendency of Other Actions or Proceedings; and

Exhibit D Notice of Related Case.

Additionally, in support of the Motion to Compel Arbitration, defendants rely upon the following:

- The Complaint filed herein;
- The Bulk Policy, Motion to Dismiss, Exhibit B; and
- Declaration of John N. Ellison with attached Exhibits filed on April 14, 2009:

Exhibit 1 Complaint entitled *Countrywide Bank, FSB, et al. v. United Guaranty Mortgage Indemnity Co., et al.*, No. BC409996 ("State Court Action"); and

Exhibit 2 Complaint entitled *United Guaranty Mortgage Indemnity Co. v. Countrywide Financial Corp., et al.*, No. 2:09-cv-1888 ("Federal Court Action").

- The Declaration of Elizabeth K. Chen with attached Exhibits filed April 14, 2009:

Exhibit 1 Pooling and Servicing Agreement, dated March 1, 2006; and

Exhibit 2 Sale and Servicing Agreement, dated March 30, 2006.

In addition to these two motions, the defendants also have pending a motion to dismiss based upon Rule 12(b)(6) and (7) and Rule 19. As discussed more fully in the memorandum of law filed concurrently herewith, defendants respectfully request that the Court first decide the portion of the motion at bar that requests a stay to permit the earlier-filed and more comprehensive State Court Action to proceed. If the Court grants

that request, it need not reach the Rule 12 or arbitrability questions and may instead, leave the threshold viability of United Guaranty's allegations and the arbitrability of those claims to be decided in the more comprehensive State Court Action.

In the event the Court declines to stay this action, defendants have briefed the Rule 12 arguments in a memorandum filed on April 14, 2009, and have briefed the arbitrability issues in the memorandum filed today. Both sets of arguments are alternative ones that need to be reached only in the event the Court declines to simply stay this entire action.

Finally, defendants request that the Court hear oral argument on the Motions to Dismiss, to Stay or to Compel Arbitration submitted by defendants. Counsel for defendants believe oral argument will be beneficial to the Court given the complexity and inter-relatedness of the issues, the nature of the action and the number of inter-related lawsuits and arbitrations.

WHEREFORE, the defendants move the Court to order a stay of this action or to compel arbitration.

This the 23rd day of April, 2009.

/s/ G. Michael Barnhill

W. Andrew Copenhaver, N.C. Bar #944

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April, 2009, I electronically filed DEFENDANTS' MOTION TO STAY BASED ON JUDICIAL EFFICIENCY GROUNDS IN LIGHT OF EARLIER-FILED AND MORE COMPREHENSIVE ACTION, OR IN THE ALTERNATIVE, TO COMPEL ARBITRATION with the Clerk of Court using the CM/ECF System which will send notification of such filing to the following:

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/s/ G. Michael Barnhill
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